

09 AUG 2008 #8



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Amy E. Rinaldo
Kohn & Associates, PLLC
30500 Northwestern Highway, Suite 410
Farmington Hills, Michigan 48334

In re Application of :
FRINAK et al. :
Application No.: 10/516,389 : DECISION ON PETITION
PCT No.: PCT/US02/23958 :
Int. Filing Date: 29 July 2002 :
Priority Date: 30 July 2001 :
Attorney Docket No.: 0256.00004 :
For: ACCESS PRESSURE RATIO AND :
TESTING METHOD :

This decision is in response to applicants' "Petition under 37 CFR 1.181" filed 03 July 2006. No petition fee is required.

BACKGROUND

On 29 July 2002, applicants filed international application PCT/US02/23958 which claimed a priority date of 30 July 2001. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee was to expire 30 months from the priority date, 30 January 2004.

On 30 November 2004, applicants filed a Transmittal Letter for entry into the national stage accompanied, *inter alia*, by: the requisite basic national fee; a copy of the international application; a preliminary amendment; and a petition to revive under 37 CFR 1.137(b). In a decision dated 16 May 2005, applicants' petition was granted.

On 25 May 2005, the United States Designated Office (DO/EO/US) mailed a Notification Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that a signed oath/declaration of the inventors in compliance with 37 CFR 1.497(a) and (b) together with a surcharge payment were required. The notification set a two-month time limit in which to respond.

On 19 June 2006, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to file a complete response to the Notification of Missing Requirements mailed 25 May 2005 within the time period set therein.

On 03 July 2006, applicants filed the present petition which was accompanied, among other things: a copy of the declaration(s) and power of attorney(s) filed 09 June 2005; an Express Mail Customer Receipt dated 09 June 2005; and an Express Mail Track & Confirm Statement.

DISCUSSION

The above-identified application was abandoned on 25 July 2005 for failure to respond to the Notification of Missing Requirements mailed 25 May 2005. Applicants state in the present petition that an oath/declaration was mailed to the United States Patent and Trademark Office on 09 June 2005 pursuant to 37 CFR 1.10. A review of the application file reveals that the oath/declaration allegedly filed 09 June 2005 is not located therein.

37 CFR 1.10 (e) states:

Any person mailing correspondence addressed as set out in § 1.1(a) to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS, but not received by the Office, may petition the Commissioner to consider such correspondence filed in the Office on the USPS deposit date, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;"

(3) The petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in," a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day; and

(4) The petition includes a statement which establishes, to the satisfaction of the Commissioner, the original deposit of the correspondence, and that the copies of the correspondence, the copy of the "Express Mail" mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence and original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS.

Applicants have satisfied Items (1) through (4). The evidence of record is sufficient to establish with reasonable certainty that the oath/declaration was deposited with the United States Postal Service as an "Express Mail" Mailing on 09 June 2005. Applicants' petition to withdraw the holding of abandonment is granted.

CONCLUSION

As construed above, applicants' petition to withdraw the holding of abandonment is GRANTED.

The application has an international filing date of 29 July 2002 under 35 U.S.C. 363, and a 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) date of 09 June 2005.

This application is being forwarded to the National Stage Processing Branch of the International Division for further processing.

Anthony Smith

Anthony Smith
Attorney-Advisor
Office of PCT Legal Administration
Tel: (571) 272-3298
Fax: (571) 273-0459

BEST AVAILABLE COPY